



STATE ETHICS COMMISSION BULLETIN

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Spring 2007

Commission Seeks Legislative Changes

The Commission has filed four bills as part of a comprehensive legislative packet to strengthen and clarify M.G. L. c. 268A, the conflict of interest law, and M.G.L. c. 268B, the financial disclosure law:

- **An Act Providing for Furnishing a Summary of the Conflict of Interest Law to State, County and Municipal Employees** (Senate Bill No. 1860) sponsored by Sens. Creedon and Baddour; House Bill No. 3256 sponsored by Reps. Vallee, Gobi, Wolf and Koutoujian) provides that all state, county and municipal employees receive copies of a summary of the relevant provisions of the conflict of interest law prepared or approved by the Commission, not just a copy of G.L. c. 268A, s. 23, as currently provided for municipal employees only in the law. The legislation provides for a 90 day transition period for current state, county and municipal employees.

- **An Act Increasing Penalties for Violations of the Conflict of Interest Law** (Senate Bill No 1861 sponsored by Senators Creedon and Baddour; House No. 3255 sponsored by Reps. Vallee and Koutoujian) would increase the civil penalties for violation of the conflict of interest and financial disclosure laws to \$10,000 per violation. It also increases the criminal penalties for violation of the conflict of interest law to \$10,000 with a couple of exceptions. Specifically, the criminal penalty for bribery, which is currently \$5,000, is increased to \$25,000; the criminal penalty for violations of s. 21B, which is currently \$500, is increased to \$2,000. Finally, the legislation provides that the Commission may seek restitution for violations of s. 23 as it can for

violations of other provisions of the conflict of interest law.

- **An Act Relative to the Financial Disclosure Law** (Senate Bill No. 1862 sponsored by Sen. Creedon, Reps. Creedon and Festa) would extend the Statement of Financial Interests (SFI) categories from \$100,000 to \$1,000,000 in \$250,000 intervals. In addition, it reduces the number and changes the amount of the categories below \$100,000, which now increase in \$20,000 dollar intervals. The new categories below \$100,000, which provide more useful and familiar ranges by tracking the monetary system, would be \$1,000, \$5,000, \$10,000, \$20,000 and \$50,000.

- **An Act Clarifying, Updating and Making Technical Corrections to the Conflict of Interest Law** (Senate Bill No. 1863 sponsored by Senators Creedon and Baddour; House Bill No. 3257 sponsored by Reps. Vallee and Koutoujian) addresses five separate issues. A brief description of each issue addressed by the bill is set forth below.

(A) The “revolving door” limitations and SFI disclosure provisions that currently apply to “legislative agents” would also apply to “executive agents.” The omission of the term executive agent from G.L. c. 268A and 268B was an oversight of the lobbying reform legislation of 1994, Chapter 43 of the Acts of 1994.

(B) The application of the conflict of interest law to partners of public employees and former public employees would be clarified by moving the relevant language to the appropriate sections of the law.

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Statements of Financial Interests Due

Electronic Filing Encouraged

The Commission is urging state and county appointed and elected officials who are required to file annual statements of financial interests (SFIs) to use the [online filing program](#). Appointed state and county officials in policy-making positions are required to file by May 1, 2007; elected officials face a May 29, 2007 deadline.

Commission staff members are available daily to provide walk-in (1 Ashburton Place, Room 619) or telephone (617-371-9500) assistance to filers who wish to file electronically.

A number of agencies, including Administration and Finance, Public Safety and the Department of Education have taken steps to ensure that all their employees file electronically.

Each year, nearly 100% of filers meet the deadlines. A small percentage of individuals fail to file in a timely manner. Failure to file may result in civil penalties of up to \$2,000. In addition, an official who is required to file but who has not done so may not continue to perform his or her duties or receive compensation.

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"The Legislative Initiative"

For the first time in many years, the Commission has filed a legislative package. The Commission sees its goals as promoting education and advice about the conflict of interest and financial disclosure laws, ensuring public disclosure as required and vigorously enforcing the laws. Everything we do is designed to meet those goals. The four bills we've filed are not a comprehensive reform but are targeted to make the law clearer, to increase deterrence through increased fines and to provide education and meaningful disclosure.

Penalties have remained the same for nearly 30 years. While most public officials do the right thing, increased penalties will provide the Commission with the ability to impose more significant fines. In addition, the Commission could seek restitution for violations of all sections of the law.

The technical bill clarifies, simplifies and in some instances corrects parts of the conflict of interest law that have raised concerns for the Commission and others over the years.

Increasing the categories for reporting on financial disclosure forms is an update that makes sense. The highest category currently is '\$100,000 or more;' the changes would create categories in intervals up to '\$1 million or more'.

The educational bill would require all public employees to receive a plain language summary of the bill. Currently, the law requires only that municipal employees receive a copy of one section of the statute. The summary will go to state, county and municipal officials and employees and will compliment other educational efforts by the Commission including an online training program, and the addition of a municipal training specialist to increase educational seminars in cities and towns.

Peter Sturges

Commission Members Spring, 2007

E. George Daher, Chair
Tracey Maclin
Matthew N. Kane
Jeanne M. Kempthorne
David L. Veator

Carol Carson
Editor

Commission's Educational Program Enhanced

The Commission has added a municipal specialist to its staff and is increasing the number of seminars it will be able to offer to cities and towns.

The Commission provides free educational seminars for municipalities, state and county agencies and public groups explaining how the conflict of interest law applies to the conduct of municipal, county and state officials and employees. Some of the topics covered at these informative sessions include restrictions on receiving gifts, outside employment, contracting with the public employer, acting on matters in which family members and business associates have a financial interest, leaving municipal, county or state government to work for

companies which conduct business with the town, county or commonwealth and avoiding appearances of conflicts of interest.

The Commission staff also regularly offers free seminars at its Boston office, Room 619, One Ashburton Place. Please contact the Commission

at 617-371-9500 if you are interested in sponsoring a seminar in your city or town or at your facility or in attending one of the Commission's in-house training sessions.

The Commission has also created an [online training program](#) for state

employees. The introductory program provides a short summary of the key provisions of the conflict of interest law and follows up with questions to further state employees' understanding of these provisions.

Staff Notes

Kristina Patyjewicz has been named the Municipal Training Specialist. A graduate of McGill University, she earned a Master of Public Administration at SUNY Albany's Nelson A. Rockefeller College of Public Affairs. She grew up in Plattsburg, New York and worked as a senior administrative analyst at the New York Office of Mental Retardation and Developmental Disabilities and as a mediator in the Consumer Frauds and Protection Unit of the office of New York Attorney General Eliot Spitzer before joining the Commission.

Ariel Dunlap, a second year law student at New England School of Law is working as an intern in the Commission's Legal Division as part of an administrative law clinic. She is a native of Brookline and a graduate of the Tufts University.

Northeastern University students **Katie Bendoraitis** and **Daniel Song** are serving as interns in the complaint intake section of the Commission's Enforcement Division. Bendoraitis graduated from Tampa Preparatory High School and expects to graduate from Northeastern with a degree in political science in 2010. Song, a Philadelphia native who graduated from Radnor High School, is a junior majoring in criminal justice.

Steven Stites and **Paul Murray**, who also served as interns in the complaint intake section, have left the Commission. Stites is working as a manager at CSN Stores and plans to attend law school in the future; Murray is an intake investigator at the Massachusetts Commission Against Discrimination.

The Commission was saddened to learn of the recent deaths of two individuals who made significant contributions to the field of government ethics in Massachusetts. **Rev. Robert F. Drinan**, S.J., served on the Commission that wrote the conflict of interest law in 1961. He later served as a U.S. Congressman. Retired Chief Justice **Edward F. Hennessey** served as the chairman of the Commission between 1989 and 1994.



Recent Enforcement Matters

The Ethics Commission investigates numerous cases alleging violations of the conflict of interest and financial disclosure laws each year. While the Commission resolves most matters confidentially, it resolves certain cases publicly.

A disposition agreement is a voluntary written agreement entered into between the subject and the Commission in which the subject admits violating the law and agrees to pay a civil penalty. Disposition agreements are matters of public record once a case is concluded.

The Commission does not comment on any matter under investigation, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential.

Full texts of Disposition Agreements can be found on the Commission's website at www.mass.gov/ethics.

[In the Matter of Richard Bretschneider](#) - The Commission fined Nantucket County Sheriff Richard Bretschneider \$1,500 for violating the state's conflict of interest law by offering to purchase an interest in property from a person on whom he was serving an eviction notice. According to the Disposition Agreement, in May 2005, Bretschneider in his official sheriff's uniform drove his Sheriff's Department vehicle to the residence of a woman he had approached on numerous previous occasions seeking to purchase her interest in a residential property she owned with nine other cousins. Bretschneider served her with

a 14-day Notice to Quit the residence she was renting. Bretschneider suggested she sell her interest in the property to him, saying, "This might be a good time to sell." The woman refused. By using his position to attempt to purchase property from someone with whom he was conducting official business as a sheriff, Bretschneider violated G.L. c. 268A, § 23(b)(2) and 23(b)(3).

[In the Matter of Marc Becker](#) - The Commission approved a Disposition Agreement in which Webster Planning Board Chairman Marc Becker admitted violating the state's conflict of interest law by endorsing "Approval Not Required" plans (ANRs) for two properties for which he served as the listing real estate broker. Becker paid a civil penalty of \$4,000. According to the Disposition Agreement, in 2003, Becker listed property for sale. In October 2003, he participated as a Planning Board member in endorsing an ANR plan dividing the property into two lots. When the property sold in August 2004, as a single lot, Becker received a \$9,000 commission. In 2002, while he was the listing agent, Becker participated as a Planning Board member in endorsing an ANR plan

dividing another property into five lots. When that property sold, Becker received a \$4,890 commission. By participating in the approval of ANRs at the time he was a listing agent for the property and therefore had a financial interest in the matters, Becker violated G.L. c. 268A, § 19.

[In the Matter of Thomas Crean](#)
[In the Matter of Christopher Bradley](#)

- The Commission concluded public proceedings against former Beverly Mayor Thomas Crean and former Purchasing Director Christopher Bradley by approving Disposition Agreements in which Crean and Bradley each admitted to violating the state's conflict of interest law by arranging for Crean's laptop computer to be declared surplus, then selling it to Crean for \$100 days before he left office. Crean paid a civil penalty of \$1,000 and reimbursed the City of Beverly \$500 for the computer; Bradley paid a civil penalty of \$500. According to the Disposition Agreements, in 2002 when Crean took office, the city paid \$1,785 to purchase a Compaq Presario laptop computer for his use. In fall 2003, Crean decided he wanted to buy his laptop from the city when he left office. Both Bradley and the city solicitor told Crean that he would have to follow legal procedures for disposing of items no longer of use to the city. Crean did not follow the proper procedure when he directed Bradley to treat the laptop as surplus. Bradley proceeded to treat the laptop as surplus and put it up for auction. Crean's bid of \$100 was the only bid. Crean paid for and took possession of the laptop shortly before he left office in early January 2004. By directing his subordinate, Bradley, to declare the laptop surplus and by guiding the procedure for doing so, Crean violated G.L. c. 268A, § 19. By bidding on and purchasing the laptop from the city, Crean violated G.L. c. 268A, § 20. From Bradley's failure to require Crean to comply with the usual procedures for disposal of surplus property, it appeared that Crean could

SECTION BY SECTION THE CONFLICT OF INTEREST LAW, G. L. c. 268A

- Section 3 of the conflict of interest law prohibits anyone from offering anything of substantial value to any public employee for or because of any official act performed or to be performed by the public employee or act within his official responsibility.
- Section 19 prohibits a municipal employee from officially participating in matters in which he has a financial interest.
- Section 20 prohibits a municipal employee from having a financial interest in a contract made by the municipality.
- Section 23(b)(2) prohibits a public employee from using or attempting to use his position to secure for himself or others an unwarranted privilege of substantial value not properly available to similarly situated individuals.
- Section 23(b)(3) prohibits a public official from knowingly or with reason to know acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the public employee's favor in the performance of his official duties.

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Recent Enforcement Matters (Cont'd.)

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improperly influence Bradley or unduly enjoy Bradley's favor in the performance of his official duties. Thus, Bradley violated § G.L. c. 268A, 23(b)(3). Bradley could have avoided violating § 23(b)(3) by making an advance written disclosure to dispel the appearance of impropriety. He did not make such a disclosure.

In the Matter of David Guertin - The Commission fined Provincetown Department of Public Works (DPW) Director David Guertin \$2,000, consisting of a \$1,000 civil penalty and a \$1,000 forfeiture, for violating the state's conflict of interest law by improperly receiving free dockage for his sailboat from Provincetown-MacMillan Realty Trust (PMRT). According to the Disposition Agreement, Guertin was the project manager for the renovation of MacMillan Wharf, owned by PMRT, and was involved in overseeing the Town water system and in determining betterment assessments, all of which financially impact PMRT. In late spring 2001, Guertin, who kept his 30-foot sailboat at a mooring in the Provincetown marina, accepted the offer of a PMRT principal to tie up his boat at the PMRT slip on the wharf to make repairs. Guertin docked his boat at PMRT's slip for approximately 10 days. The value of the docking was approximately \$1,000. Guertin did not pay for the use of the slip. By using his position as DPW director to secure free dockage for himself Guertin violated G.L. c. 268A, 23(b)(2).

In the Matter of Edward Higgins, Jr. - The Commission fined Lynn Fire Chief Edward Higgins, Jr. \$3,000 for violating the state's conflict of interest law by promoting, supervising and approving overtime for Deborah Darsney. Higgins and Darsney lived together as boyfriend and girlfriend beginning prior to Higgins' appointment to chief in 2003. They married in November 2005.

According to a Disposition Agreement, in 2003, Higgins reorganized the administrative office, assigning Darsney, who was then system accountant, additional duties and responsibilities. Darsney reported to Higgins on some matters and Higgins at times assigned and approved Darsney's overtime. In June 2005, Higgins promoted Darsney to Network Systems Assistant Coordinator, raising her salary from \$677 per week to \$832 per week. By promoting, supervising and approving overtime for Darsney, a person with whom he was living, Higgins violated G.L. c. 268A, § 23(b)(3). Higgins could have avoided violating § 23(b)(3) by disclosing in writing to the Mayor, his appointing authority, of his relationship with Darsney and the actions he was taking. He did not make such disclosures. Shortly after Higgins and Darsney married, Higgins disclosed the marriage to the personnel director and informed the director that he assigned all personnel matters and supervision of Darsney to the deputy chief. The deputy chief approved Darsney's requests for time off; Higgins continued to daily supervise Darsney. On five occasions between December 2005 and March 2006, Higgins approved overtime for Darsney. The overtime totaled \$2,600. By supervising and approving overtime for his spouse, Higgins violated G.L. c. 268A, § 19.

In the Matter of James Manning
In the Matter of Joseph Rebello - The Commission issued two Disposition Agreements in which former Monson selectman James Manning and former Monson Police Chief Joseph Rebello each admitted violating the state's conflict of interest law and agreed to pay fines of \$2,000 and \$1,000, respectively. According to the Disposition Agreements, in 2001 Manning asked Rebello to issue him a \$415 police pistol because Manning felt threatened by a suspended police sergeant. Rather than require

Manning to buy his own gun, Rebello gave Manning the police pistol after Manning, who already had a gun permit, completed a firearm training course, as required by Rebello. Manning had the pistol for six months before turning it in when he left for military duty. When Manning returned from military duty, he again sought a police pistol but his request was denied after the new police chief brought his request to the other selectmen. Manning felt he was entitled to a police pistol because he was a police commissioner, even though he had no enforcement responsibilities requiring him to carry a pistol. There is nothing in the Monson town ordinances or the Massachusetts General Laws that authorizes a police commissioner to be issued a police department pistol. By using his position to receive a police pistol to which he was not entitled, Manning violated G.L. c. 268A, § 23(b)(2); by giving him the pistol, Rebello also violated § 23(b)(2).

In the Matter of Brian Moore
In the Matter of Peter Murphy
In the Matter of Gary Van Tassel - The Commission issued a Disposition Agreement in which Brian Moore, owner and manager of Kappy's Liquors of Springfield admitted violating the conflict of interest law by giving gift certificates enclosed in holiday cards totaling approximately \$200 to each Springfield Liquor License Commissioner each December from 1999 to 2003. Moore paid a \$10,000 civil penalty. In addition, two former Commissioners, Peter Murphy and Gary Van Tassel, were fined \$1,000 and \$500 respectively for receiving the gift certificates and thus creating an appearance of conflict of interest. According to the Disposition Agreement, Moore gave the gift certificates with the intention that the Commissioners would "come into his store and see that he ran a clean operation." In late November or early

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Recent Enforcement Matters (Cont'd.)

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December each year, the Commissioners reviewed and approved Kappy's liquor license renewal. In 2000, despite the return of the gift certificates by one Commissioner with a request not to send such gifts to Commissioners in the future, Moore continued to send gift certificates through 2003. By giving gifts to Commissioners to influence their renewal of his liquor license, Moore provided them with illegal gratuities in violation of § 3. In two separate Disposition Agreements, Murphy and Van Tassel admitted violating G.L. c. 268A, § 23(b)(3). Murphy received gift certificates in 2002 and 2003 and gave them to a charity and to a family member who gave them to a friend and a babysitter. Van Tassel received gift certificates in 2003 and gave them to his wife who gave them to a colleague. The Commissioners could have avoided violating §23(b)(3) by returning the certificates or by making an advance written disclosure of their receipt of the gift certificates prior to voting to renew Kappy's license. They did not make such disclosures.

In the Matter of Michael P. Ross - The Commission fined Boston City Councilor Michael P. Ross \$2,000 for violating the state's conflict of interest law by using his right to have parking tickets "administratively dismissed" if the violations occurred when the councilor was performing official city business to have approximately 35 tickets he received when he was conducting personal business dismissed. According to the Disposition Agreement, between January 2002 and February 2006, Ross had approximately 105 tickets dismissed. Most of the tickets involved parking violations resulting from a failure to pay parking meter fees (\$25 per ticket) and/or parking without a permit in resident-only parking spots (\$40 per ticket). Although Ross is a resident of Boston and eligible for a

resident parking permit, he did not obtain such a permit. Approximately 35 of the tickets, with an estimated value of \$1,000, were issued while he was engaged in personal rather than City business. After the Commission initiated its investigation, Ross reimbursed the City \$1,000 for these tickets. By using his City Council position to obtain dismissal of approximately \$1,000 worth of personal parking tickets, Ross violated § 23(b)(2).

In the Matter of Cheryl Stanley - The Commission fined former Springfield Liquor License Commissioner Cheryl Stanley \$2,000 for receiving gift certificates from Brian Moore, owner and manager of Kappy's Liquors of Springfield. In a Disposition Agreement, Stanley admitted violating G.L. c. 268A, § 23(b)(3). Stanley received gift certificates enclosed in holiday cards each year from 1999 through 2003 and gave the gift certificates away. Stanley could have avoided violating §23(b)(3) by returning the certificates or by making an advance written disclosure of her receipt of the gift certificates prior to voting to renew Kappy's license. She did not make such disclosures.

In the Matter of Matthew Straight - The Commission issued a Disposition Agreement in which former Fitchburg City Councilor Matthew Straight admitted violating the state's conflict of interest law and agreed to pay a fine of \$2,000. According to the Disposition Agreement, Straight worked for and owned 2 percent of Johnsonia Associates, a limited partnership created to own and manage a 52-unit apartment building on Main Street in Fitchburg. Straight's father owned a majority share of the partnership, and a third person owned the remaining share. In 2002, Straight received oral advice from the Ethics Commission that he could not participate as a city councilor in a discussion that would affect his or his father's financial interests. In 2004

and 2005, the Straights began the process to convert the Johnsonia rental units into condominiums. In January 2005, Straight wrote a letter to the License Commission as a city councilor raising concerns about the Third Base Bar & Grill, a bar near the Johnsonia building that was facing suspension of its liquor license. Straight recommended that the bar's closing hours be changed from 2 a.m. to 12 midnight and that the bar receive a warning letter. In March 2005, Straight spoke at a License Commission hearing regarding the House of Brews, another bar near the Johnsonia building. The decisions concerning the neighboring bars would affect the plan to redevelop the Johnsonia building as a condominium building. As the manager of the Johnsonia and a part-owner of the building, Straight had a private financial interest in keeping the neighborhood safe and free from crime. By participating as a City Councilor in matters before the License Commission involving bars nearby the Johnsonia building, Straight participated in matters affecting his, his father's and his employer's financial interests in violation of G.L. c. 268A, § 19.

In the Matter of Scott Trant - The Commission fined Somerville Police Officer Scott Trant \$10,600, a \$10,000 civil penalty and a \$600 reimbursement, for violating the state's conflict of interest law by attempting to purchase property from a person seeking police assistance in connection with the property. The Disposition Agreement concludes public proceedings by the State Ethics Commission against Trant. According to a Disposition Agreement, on February 9, 2005, an Everett woman visited the Somerville Police Department and sought assistance from Trant, who was on duty, regarding her ex-husband. The woman told Trant about her ex-

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Litigation Update

The Executive Director, and by delegation, the Commission's Legal Division attorneys, have special assistant attorney general status. This status permits Legal Division attorneys to represent the Commission in court proceedings, under the oversight of the Office of the Attorney General.

State Ethics Commission v. Louis A. Mandarinini, Jr.

Mandarinini paid his civil penalty and the case was dismissed without further litigation.

Jane Doe v. State Ethics Commission

The Massachusetts Appeals Court, on January 22, 2007, upheld a Commission summons served on Jane Doe by concluding that the Commission properly followed its procedures in issuing the summons. The Court also upheld a protective order granted to the Commission by the Superior Court, finding that Doe was not entitled to discovery in the course of the summons enforcement proceeding. Materials in this matter are impounded.

Recent Enforcement Matters (Cont'd.)

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husband's behavior and questionable mental state. The ex-husband was living in an illegal apartment in the basement of a dilapidated property that had been cited for code violations. The property, located at 21 Vernon Street in Somerville, was owned in trust by the woman and her two children. The woman had agreed to have her ex-husband removed from the property and to correct any code violations as part of a January 2004 agreement with the Somerville Inspectional Services Division (ISD). She reported to Trant that she had considered selling the property and had rejected an offer of \$100,000. According to the woman, Trant offered to purchase the house, for approximately \$200,000. The house was assessed at \$438,700.

On February 9 and 10, 2005, Trant attempted to phone ISD to gain more information about the city's action involving the house; contacted the psychiatric unit of Cambridge Hospital for "information about getting someone committed;" went to 21 Vernon Street to conduct a "welfare check;" and reported to Cambridge Hospital on the ex-husband's condition. On February 11, 2006, the ex-husband was involuntarily committed to a psychiatric facility. On February 14, 2005, Trant discussed the ex-husband with caseworkers at Cambridge Hospital and the Department of Mental Health. On February 23, 2005, Trant again offered by phone to purchase the house for \$200,000. He had an attorney draw up a standard purchase-and-sale agreement and

gave the agreement to the woman, who signed it. The Somerville Police Department began investigating Trant's conduct regarding this matter. After the woman's attorney told Trant she now believed she could get \$400,000 for the property, he increased his offer to \$300,000. Ultimately, the property transaction did not occur; nonetheless, Trant requested \$600 from the woman to pay for his legal fees. The woman gave Trant the money. In September 2006, Trant was terminated for conduct unbecoming a police officer; he has appealed his termination. By using his position as a police officer to attempt to purchase property at a reduced price and in a quicker time frame, Trant violated G.L. c. 268A, § 23(b)(2).

Commission Seeks Legislative Changes (Cont'd.)

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Currently, for example, the restriction on partners of current public employees is found in the sections on former public employees. The legislation would not make any substantive change in the application of the conflict law on partners of present or former public employees.

(C) This section would clarify how a special state, county or municipal employee may utilize the clause "c" exemption. The law now permits special employees to take advantage of clause (c) if they serve "on no more

than sixty days during any period of three hundred and sixty-five consecutive days." This creates at least two problems. First, there is the difficulty in tracking a rolling 365 day timeline. Second, since "service" on a day includes any substantive service, the length of service can range dramatically from 10 minutes to 10 hours per day. The bill would set the limit at 200 hours.

(D) This section would increase the small town population exception, which permits employees to hold multiple positions with approval from

the Board of Selectman, from 3,500 to 5,000.

(E) This section would codify the Commission's advice that former public employees have the same right to testify as present public employees and simply includes the language applicable to current employees to former employees. It does not authorize such employees to testify as experts in connection with particular matters that they participated in as public employees or that were the subject of their official responsibility.